

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

DONALD L. MOSHIER, JR)	
)	
Plaintiff,)	CIVIL ACTION NO. 05-180(ERIE)
)	
v.)	JUDGE MCLAUGHLIN
)	MAGISTRATE JUDGE BAXTER
UNITED STATES OF AMERICA,)	
)	Electronically Filed
Defendant.)	

**UNITED STATES' MOTION FOR LEAVE TO FILE A REPLY BRIEF
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Defendant the United States of America, by its undersigned counsel, hereby files the following Motion for Leave to File a Reply Brief in Support of its Motion for Summary Judgment, and in support thereof states as follows:

1. *Pro se* prisoner Donald L. Moshier, Jr. originally filed this *pro se* lawsuit against the United States of America and five (5) individual defendants, alleging tort and constitutional claims based on allegedly inadequate medical care that he received during his incarceration at a federal prison in McKean County, Pennsylvania ("FCI McKean").

2. Plaintiff's only remaining claim, however, is against the United States for medical malpractice pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. §§ 1346(b), 2671 *et seq.* In particular, plaintiff's remaining claim alleges that the medical staff at FCI McKean provided negligent medical treatment with regard to his Hepatitis C virus.

3. As a result of the alleged medical malpractice, the Amended Complaint requests \$100,000.00 in actual damages, plus costs and any other relief the Court deems appropriate. (*See* Am. Compl., ¶ 40(B)-(D)).

4. October 12, 2007, the United States filed a Motion for Summary Judgment and Brief in Support thereof. (Docket Nos. 51-53). In its Brief, the United States argued that summary judgment should be entered in its favor because Pennsylvania law is clear that, in a case such as this involving complex medical issues, a plaintiff cannot maintain a medical malpractice claim without producing a sufficient expert report or testimony, and that plaintiff had failed to produce such requisite evidence in this case. The United States argued that plaintiff cannot demonstrate a breach of the standard of care, because the medical records show that the medical staff at FCI McKean treated plaintiff in accordance with the applicable medical guidelines. Finally, the United States argued that plaintiff cannot demonstrate that any delay or denial of treatment caused his cirrhosis, because medical records show that plaintiff has had cirrhosis since at least 1999. (*See* Docket No. 52).

5. On December 14, 2007, plaintiff filed his "Rebuttal to United States Governments Motion for Summary Judgment" which concedes that plaintiff is not claiming that the alleged delay in initiating antiviral therapy caused his cirrhosis. (*See* Docket No. 59 at 4). Rather, plaintiff argues, *inter alia*, that the medical staff at FCI McKean was negligent because it allowed plaintiff to develop an infection that allegedly lead to gallbladder problems, and because the dosage and duration of his antiviral treatment was inappropriate. Plaintiff also alleges that he has satisfied the requirement for expert testimony because he named treating physicians as witnesses.

6. To allow the opportunity to address the arguments in plaintiff's rebuttal, the United States respectfully requests leave to file a reply brief in support of its motion for summary judgment. Specifically, defendant requests permission to file its reply brief within twenty-one (21) days of this motion, or on or before January 25, 2008.

7. A reply should also be permitted because the original briefing schedule provided that the United States should file a reply within ten (10) days of plaintiff's opposition. (*See* Docket No. 48). But after the Court granted plaintiff's Motion for Extension of Time, the date for the United States' reply brief was not reset. (See Docket No. 56 and Text Order entered October 31, 2007). Although the United States is requesting more than the time originally scheduled, defendant needs the additional time due to the holidays, the litigation demands of defense counsel, and the schedule of the United States' expert, Barry Kisloff, M.D.

8. The United States' reply brief would be concise, and would likely assist the Court in adjudicating the pending Motion for Summary Judgment.

WHEREFORE, defendant the United States of America respectfully requests that the Court issue an Order granting its motion for leave to file a reply brief in support of its pending motion for summary judgment, and providing that the United States shall file its reply brief on or before January 25, 2008.

A proposed order is attached.

Respectfully submitted,

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Dated: January 4, 2008

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of January, 2008, a true and correct copy of the within United States' Motion for Leave to File a Reply Brief in Support of its Motion for Summary Judgment was served via electronic and/or first-class mail, postage prepaid upon the following:

Donald L. Moshier, Jr.
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s/ Megan E. Farrell

MEGAN E. FARRELL
Assistant U.S. Attorney